IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

Crl.MC.No. 2676 of 2006()

AGAINST THE ORDER DATED 11/06/2006 IN CMP. 2853 /2006 IN CC.311/2005 of J.F.C.M. (MARAD CASES) KOZHIKODE

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PETITIONER: PETITIONER/ACCUSED

O.ASOKAN,
S/O.APPU, AGED 47 YEARS, MADATHIL THODIYIL VEEDU,
MANASSERY P.O., KOZHIKODE DISTRICT.

BY ADV. SRI.K.M.FIROZ

RESPONDENTS: RESPONDENT/COMPLAINANT/STATE

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1. NIDHISH KUMAR,
S/O.PURUSHOTHAMAN, AGED 30 YEARS,
HARI SHREE HOUSE, CHALIL ROAD, MANKAVU,
KOZHIKODE-670 007, KASABA POLICE STATION LIMIT.

2. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB
R1 BY ADV. SRI.NIRMAL. S

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2676 of 2006

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Dated this the 8th day of January, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. The cheque is drawn on a cheque leaf issued to the petitioner by his bank to operate his account. The signature and entries in the cheque are all disputed in the reply affidavit. The matter is at the stage of defence evidence. The petitioner has raised a contention that the cheque was not issued by him to the complainant and that the complainant must have come into possession of the same some how when his employees threw out the articles, including documents from the toddy shop run by him. The petitioner wanted the cheque to be sent to the expert for comparison.

2. The application to send the cheque to the hand writing expert was opposed by the respondent as one without any bonafides. The complainant relied on the fact that at no point of time was any complaint raised about the loss of the cheque by the petitioner. Reliance was placed on Annexures A and B to drive home the point that the complainant,who had raised a complaint

before the police officials, had not raised any specific grievance about loss of cheque leaves from his possession. There is no contention that stop payment memo was issued to the bank. Of course, in the reply notice this contention is seen raised.

3. It is trite by now that the discretion under Section 254(2) Cr.P.C. is to be exercised by the learned Magistrate carefully and cautiously, having regard to all the circumstances of the case. The question is not merely whether such a contention is raised in the reply notice or not. In the totality of facts and circumstances of the case, I am of the opinion that the learned Magistrate cannot be faulted for choosing to exercise the discretion under Section 254(2) Cr.P.C. not in favour of the accused.

4. It is also crucial to note that the cheque was dishonoured not on the ground that the signature does not tally with the specimen signature of the accused maintained in the bank. No attempt has been made to summon the Manager of the Bank or the specimen signature card maintained by the bank. The impugned order is an interlocutory one. A revision petition is not maintainable. Normally the petitioner must wait to challenge the interlocutory order along with the final order to be passed in the prosecution. I do not intend to encumber the records with any unnecessary

finding. Suffice it to say, that I am satisfied that in the facts and circumstances of this case, there is no reason to invoke the extra ordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C. to interfere with the impugned order.

5. This Crl.M.C. is hence dismissed. But I may hasten to observe that the dismissal of this petition will not in any way fetter the rights of the petitioner to adduce other evidence in defence or to challenge the impugned order in the light of such other evidence made available, at later stages before appropriate forum.

(R. BASANT)
Judge

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